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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,327	03/15/2004	Aaron M. Lamstein	545.45	1933

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DERGOSITS & NOAH LLP
Suite 1450
Four Embarcadero Center
San Francisco, CA 94111

EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,327

Applicant(s)

LAMSTEIN, AARON M.

Examiner

C. SAYALA

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/14/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

“such as” or “other” in these claims may be replaced with “selected from the group consisting of”, since the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). “Other” does not disclose what other products applicant considers as part of his invention.

“Low” in the claims is of indeterminate scope.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hanson (Dog Treat Recipes, 7 pages, 2001, downloaded from www.dragonbear.com/rec-bis2.html).

The recipe shows cookies for cats with catnip. Since the recipe contains little or no moisture and is baked, the moisture content as low as 10%. The rejection is being made under both statutes because a proper comparison of the prior art product cannot be made and that burden is being shifted to applicant.

3. Claims 1, 3-4, 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by West Coast Cat Company (downloaded from <http://www.westcoastcat.com/scartchins/biskitti.html> , 3 pages, 8/2002).

This recipe shows biscotti, which has dried catnip and contains 1 tablespoon of water and it is baked at 350 degrees C. It is inherent that it is a typical dry pet food product. It contains beef and is coated with catnip.

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4. Claims 1, 3-4 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Catnip Tuna Kitty Treats by Pixie (downloaded from <http://www.recipezaar.com/37737>, posted 2002, 3 pages).

The recipe shows a tuna treat with catnip that is coated on the product. The commentary (page 2) states that the treats were hard and therefore, it would be inherent that the water content is low as for dry pet food products.

5. Claims 1, 4, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Catnip Pizza (downloaded from <http://www.catnippizza.com>, 6 pages, Feb 2003).

The product contains the ingredients of claim 4 for instance and It is dry. The ingredients are placed on the surface of the product.

6. Claims 1, 3-4, are rejected under 35 U.S.C. 102(a) as being anticipated by Product Alert, (Vol. 31, No. 9, May 2002, abstract) taken in light of Featherer Pet brochure (downloaded from <http://www.feathererpets.com/FeathersStore/catstore.html>, Aug 2003, 9 pages) and the pages downloaded from <http://www.petacular.com>.

The Kookamunga Catnip Treats product is a treat that would inherently contain low moisture (see ingredient analysis at pages 8-9). It contains real chicken and catnip. The brochure also shows Cosmic Catnip Treats at page 6, which also anticipates the same claims. The Product Alert abstract provides the date when this

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product was known.

7. Claims 1, 3-4, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by or Product Alert (Dec 1996, abstract) taken in light of the Bluegrass Buddy brochure (downloaded from <http://www.bluegrassbuddy.com>, 3 pages , archived material dated Dec 2003).

Both show Nibletz Cat treats that contain liver and catnip. A treat would inherently contain low moisture as is typical of a dry pet food. The Product Alert brochure provides when this product was known.

8. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by "Kitty Treats!", (downloaded from <http://www.catscans.com/recipes.htm>) Feb 2003, 7 pages).

This recipe collection shows cookies as well as tuna fishballs with catnip. See pages 2 and 7.

9. Claims 2, 5, 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over West Coast Cat Company or Pixie or Featherer Pet brochure or Product Alert, Vol. 31, No. 9 or Bluegrass Buddy brochure or Product Alert 1996 in view of EP 0421956 or The Cat Connection brochures downloaded from archived materials at <http://www.thecatconnection.com>, dated Oct 2003 as well as Dec 2003.

The primary references are as discussed above. They do not teach the freeze-drying aspect of applicant's claims. Also, although these references teach catnip in their recipes, and some of the recipes teach amounts, it is not clear if these amounts are one teaspoon per ounce of food product.

The secondary references teach that freeze drying a pet food product, whether a treat (Wildside Salmon, shown on page 5 of the Dec 2003 brochure) or a cat food, was already known and practiced in the art before applicant's invention for the benefits enumerated at page 3 of the EP patent at lines 1-7. Other advantages are obvious such as ease of shipping and handling since the dried product is devoid of moisture weight. It would have been obvious to freeze dry the instant product too, particularly since it contains a herbal material, i.e. catnip, which would maintain its freshness (see last page of the Oct 2003 reference). As for amounts of catnip, it is well within the ambit of ordinary skill to modify a recipe depending on how much catnip is desired in these recipes based on the size or type or breed of animal being fed. Furthermore, when recipes as well as pet food products already on the market, are available, it is clear that the level of skill in the art at the time of filing would have enabled the practitioner to fathom such amounts as presently claimed.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the disclosure of Sarah Hoggan dated June 2002 which teaches "Cat Crunchies" that are hard-textured and contain catnip.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.